IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7946 of 1989

with

SPECIAL CIVIL APPLICATION No 716 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARASNATH RAMNAGINA JADAV

Versus

RUBY COACH BUILDERS PVT. LTD.

Appearance:

1. Special Civil Application No. 7946 of 1989

MR IA PATEL for Petitioner

MR KM PATEL for Respondent No. 1

2. Special Civil ApplicationNo 716 of 1990

MR KM PATEL for Petitioner

MR IA PATEL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 08/10/1999

ORAL JUDGEMENT

Heard Mr. K.M.Patel for the Management. By means of these petitions, the award passed by the Labour Court, Ahmedabad in Ref. (LCA) No. 796 of 1986 dated 20th July, 1989 has been challenged by both, namely the workman and the Management.

Today, when the matter was taken up for final hearing, Mr. I.A. Patel, learned advocate for the workman has not remained present. Mr. K.M. Patel, learned advocate for the Management has remained present before this Court and has made his submissions.

The facts leading to the filing of these two petitions are, in short, that workman was working in the workshop as welder for thelast eight years and he was a leader, representative and protected workman of the General Engineering Mazdoor Union. According to the petitioner in special civil application no. 7946 of 1989, because of the demand of the union to increase the wages of the workmen, the employer started threatening to terminate the services of the leaders of the union and, therefore, a show cause notice was served to the workman though he was on leave and on the basis of the charge contained therein, departmental inquiry was initiated which was against the principles of natural justice and ultimately, the workman was dismissed from service on 5.12.1985. Said order of dismissal of the workman was challenged by him before the labour court by filing the aforesaid reference. Before the labour court, the workman had filed the statement of claim and written statement was filed by the management at Exh. 5 and it was pointed out by the respondent that on 25.9.1984, a show cause notice for adopting go slow tactics was served to the petitioner workman and after conducting the legal, fair and valid departmental inquiry, second show cause notice was issued on 24.11.1985 to which the reply was given by the workman on 29.11.1985 and after considering the reply of the workman, the workman was dismissed from service on 5.12.85. Thereafter, approval application was filed under section 33(2)(b) of the Industrial Disputes Act, 1947 and, therefore, it was urged that the workman has no case and the reference should be dismissed.

Before the labour court, the workman had challenged the legality, validity and propriety of the departmental inquiry and the said issue was decided by the labour court vide order Exh. 13 on 16.3.1988 and it was declared under the said order that the departmental inquiry held against the workman was illegal, improper and against the principles of natural justice. However,

the labour court has granted permission to the management to prove the misconduct against the workman before the labour court and, therefore, the respondent employer has examined the other witnesses vide Exh. 16 namely Shri Rajendra Tank and vide Exh. 17, Shri Praful Trivedi and vide Exh. 18, Shri Suresh Amin for proving the misconduct against the petitioner workman. It is required to be noted at this stage that after the completion of the evidence of the management, the workman concerned has not examined himself or his witnesses though an opportunity was given to him to adduce further evidence for rebutting the charge levelled against him.

The labour court, after considering the facts and circumstances of the case as also the evidence brought on record, has come to the conclusion that the workman has not come forward to explain as to under what circumstances, his production was low than that of the others and, therefore, the labour court concluded that the workman had adopted go slow tactics. The labour court has further concluded that it is true that every workman is supposed and expected to work peacefully and is expected to give the normal production and respectfully behave with his superior. The labour court considered that the relationship of workman and the employer has strained and the behavour of the workman towards his superior was not descent and good and the employer was under the strong belief that due to the concerned workman alone, there was unrest and unworthy atmosphere. In light of these observations, the labour court has considered the question as to whether the punishment imposed against the workman was disproportionate or not and if yes, what should be the relief. The labour court also considered that no hard and fast rule has been laid down for exercising the discretion and it would depend upon facts and circumstances of each case and the same should be exercised keeping in view the aims and objects of the Industrial Disputes Act. Following observations of the Supreme Court in case reported in 1970(1) LLJ 63 will be helpful:

> "The tribunal can refuse to order for reinstatement where such course, in the circumstances of the case, is not fair and proper".

Said view has recently been considered by the Bombay High Court in the decision reported in 1997 Lab. IC 3137 wherein two decisions of the Supreme Court are relied upon by the Bombay High Court and the Bombay High

Court came to the conclusion that in such circumstances when the nature of relations between the employer and the employee are not good and strained which is considered to be relevant factor to be taken into consideration while exercising the discretionary powers by the Court.

After considering this situation and the oral evidence as well as the documentary evidence led before the labour court, the labour court has considered that after declaring the domestic inquiry illegal, the employer has proved the misconduct by leading evidence both oral and documentary before the labour court against the workman and considering the delay in deciding the reference and also considering the employment of the petitioner workman and the salary in the scale of Rs.830-900, the labour court passed an award directing the employer to give compensation of Rs. 40,000/- to the workman in lieu of reinstatement and back wages for the intervening period and also directed that the workman will also be entitled to other benefits like gratuity etc. Said amount of Rs. 40,000/- has been received by the workman as per annexure "G" of special civil application no. 7946 of 1989 on 18.10.1989. Said amount was accepted by the workman under protest and reserving his right to challenge the award before the High Court.

The management has also challenged the said award by filing special civil application no. 716 of 1990 contending inter alia that since the misconduct was proved before the labour court by leading oral as well as documentary evidence, the labour court ought not to have awarded compensation and it amounts to an error committed by the labour court. The contention of the workman is that the labour court has committed an error in holding that the employer has proved the misconduct by leading oral evidence and producing documentary evidence and, therefore, the award of the labour court is erroneous. It is also contended by the workman that the labour court has erred in not awarding reinstatement with full back wages for the intervening period.

I have considered the averments made in both the petitions. I have also perused the documents produced in both the petitions. After going through the entire award passed by the labour court and also taking into consideration that the employer has proved the misconduct before the labour court and the fact that the workman has not examined himself or any witnesses to rebut the allegations levelled against him as also considering the findings given by the labour court that the relationship between the employer and the employee was strain and that

the workman has adopted the go slow tactics being leader of the union should not be reinstated though, according to the labour court, the punishment which was imposed upon the workman was disproportionate and harsh. Therefore, the labour court has further observed that more liberal view should be taken and the concerned workman should be sent home with some compensation so that he may plan his future life and not left in lurch without any grains. Though the labour court has observed that the court is awarding the compensation for wrongful discharge, however, the discharge of the workman is upheld with modification that the concerned workman will be paid the compensation while exercising the powers under section 11A of the ID Act. I fully agree with the reasoning given by the labour court while exercising the powers under section 11A of the ID Act. This Court has very limited jurisdiction while exercising the supervisory jurisdiction under Article 227 of the Constitution of India. According to the decision reported in 1998(1) GLR 17 and 1998 SC Weekly 1840, this Court cannot act as an appellate court while examining the award passed by the labour court. According to me, the labour Court has given very detailed reasons and has discussed the entire evidence in detail and has come to the right conclusion and, therefore, this Court cannot interfere with the same even if two views are possible. According to me, the labour court has not committed any jurisdictional error while passing the impugned award. No infirmity has been pointed out in the impugned award passed by the Labour Court. There is no error apparent on the face of record. Therefore, both these petitions are required to be dismissed. Accordingly, these petitions are dismissed. Rule is discharged. There shall be no order as to costs.

8.10.1999. (H.K.Rathod,J.)

Vyas